

**TENNESSEE ETHICS COMMISSION**  
**ADVISORY OPINION 07-08**  
**July 31, 2007**  
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Interpretation of T.C.A. §3-6-305,  
with respect to state officials soliciting  
contributions from employers of lobbyists.

**INTRODUCTION:**

The following Advisory Opinion is in response to a written inquiry from Gerry Boaz, on behalf of the Association of Government Accountants (“AGA”), whether state officials, when serving as members of AGA, can solicit contributions from local businesses which may be employers of lobbyists.

Mr. Boaz asks the following questions:

(1) Can a corporate sponsorship committee, comprised of state officials, solicit contributions from local businesses to benefit all members attending an AGA event?<sup>1</sup>

(2) Can the same committee solicit businesses if the contribution/donation is for the purpose of purchasing a service offered from AGA, such as advertising in AGA’s newsletter, web-site or brochures?

(3) Is it appropriate for state officials to use their state e-mail accounts when acting as AGA committee members and fund raising?

(4) Are there dollar amounts on solicitations for nominal items that might be included in conference bags or used in silent auctions?

In response to the above questions, the Tennessee Ethics Commission (“Commission”) concludes:

(1) The AGA may establish a corporate sponsorship committee to solicit contributions from local businesses. However, state officials, on behalf of AGA, may not solicit employers of lobbyists.<sup>2</sup>

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<sup>1</sup> In addition, Mr. Boaz asks the following questions: Can state officials solicit contributions on behalf of the AGA or must this be performed by its private sector members; upon soliciting contributions, can a state official participate in an AGA sponsored event; are state officials permitted to serve as board members of AGA and solicit contributions on behalf of the AGA; and what kind of fund raising activities are appropriate? These questions shall be addressed in response to Question 1, *infra*.

<sup>2</sup> The restrictions on solicitations of employers of lobbyists would equally apply to solicitations of lobbyists.

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(2) The committee, including members who are state officials, may solicit local businesses, including employers of lobbyists, to purchase a service from AGA for the fair market value of the service.

(3) It is for the state official's agency to decide the appropriate use by a state official of a state e-mail account. The Commission does not have the authority to determine the appropriate uses of state e-mail accounts.

(4) There are no dollar amounts on solicitations for nominal items that might be included in conference bags or used in silent auctions; however, if provided by an employer of a lobbyist, the requirements of T.C.A. § 3-6-305(b)(4) must be met.

### **BACKGROUND:**

AGA is a non-profit § 501(c)(3) organization comprised of local, state and federal government professionals such as auditors, accountants, contract, financial performance and budget analysts, chief financial officers, information systems managers, finance directors, inspectors general, professors and students. Most of its members, however, are state officials. Additionally, state officials have received permission to serve as Chapter Executive Committee members from their respective agencies. Most national AGA chapters have fundraising activities. Last year, the AGA solicited funds for the Southeastern Professional Development Conference, a regional event. AGA wants to start a corporate sponsorship committee to solicit contributions from local businesses to benefit all members of AGA.

### **DISCUSSION:**

(1) Can a corporate sponsorship committee, comprised mostly of state officials, solicit contributions from local businesses to benefit members of AGA?

T.C.A. § 3-6-305(a)(2) provides that a candidate for public office, an official in the legislative branch, or an official in the executive branch, or the immediate family of such candidate or official, may not solicit or accept, directly or indirectly, a gift from an employer of a lobbyist or a lobbyist, unless an exception applies.<sup>3</sup>

According to the facts provided, members of the AGA want to solicit contributions from local businesses in an effort to raise funds on behalf of AGA to sponsor its events. The statute prohibits solicitations by state officials of local businesses which are employers of lobbyists; solicitations of non-employers of lobbyists are permissible.

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<sup>3</sup> For a complete list of exceptions, see T.C.A. § 3-6-301(11) and § 3-6-305(b)(1).

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While it is important to recognize that state officials are often members or volunteers of non-profit organizations who, in their volunteer capacity, solicit contributions on behalf of the non-profit organizations, an organization such as the AGA is an established and recognized membership organization primarily for government employees and its members are mostly state officials. More importantly, being a state official and a member of the organization is not incidental and not easily separated. (For example, as the Association of *Government* Accountants, it is difficult to separate the member from their status as a state official.) Therefore, it is difficult, if not impossible for the state official, acting on behalf of AGA, to wear two hats when soliciting contributions from employers of lobbyists. Thus, pursuant to T.C.A. § 306-305(a)(2), the AGA may start a corporate sponsorship committee to solicit contributions from local businesses to benefit all members of the AGA, provided that state officials do not solicit employers of lobbyists.<sup>4</sup> There are no limits on the kind of activities which are appropriate provided that there is compliance with the above-mentioned restriction.

(2) Can a corporate sponsorship committee, which includes state officials, solicit businesses if the contribution/donation is for the purpose of purchasing a service from AGA, such as advertising in AGA's newsletter, web-site or brochures?

From the facts provided, the corporate sponsorship committee intends to offer local businesses the opportunity to purchase a service from AGA, such as advertising in the AGA newsletter, on its website, or in its educational brochures. There is no restriction on AGA offering such services to local businesses. In the case of an employer of lobbyist, provided that payment comports to the fair market value of the service provided by AGA, the gift provisions of § 3-6-305 do not apply.

(3) Is it appropriate for state officials to use their state e-mail accounts when acting as AGA committee members and fund raising?

It is for the state official's agency to decide the appropriate use by a state official of a state e-mail account. As fund raising by a state official of an employer of a lobbyist is prohibited under the statute (see Question 1 above), the use of state e-mail for that specific solicitation would be prohibited.

(4) Under the Ethics Reform Act, are there dollar amounts on solicitations for nominal items that might be included in conference bags or used in silent auctions?

T.C.A. § 3-6-305(b)(4) creates an exception to T.C.A. §3-6-305(a)(2) for the acceptance of gifts from employers of lobbyists as long as the sample merchandise, promotional items, and appreciation tokens, are routinely given to customers, suppliers, or potential customers or suppliers in the ordinary course of business.

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<sup>4</sup> State officials are urged to also check with their individual agencies regarding conflicts of interest. While the Ethics Reform Act only addresses certain behavior, various departments or agencies may be also governed by additional prohibitions.

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According to the facts provided, AGA plans to host a conference in 2008. As a part of conference participation, attendees are provided with a conference “goodie bag” and AGA would like to conduct a silent auction. Sponsors, who may be employers of lobbyists, may provide such items as long as the items donated fall within the exception in §3-6-306(b)(4). The statute does not limit the dollar amount of the bags or silent auction items donated by employers of lobbyists.

**CONCLUSION:**

AGA may establish a corporate sponsorship committee, comprised of state officials, to solicit contributions from local businesses as long as state officials are not soliciting employers of lobbyists. They may solicit employers of lobbyists where the AGA is providing a service and the employer provides fair market value for the service. The issue of whether a state official can use the state e-mail when performing services for AGA is a matter for the official’s state agency. There are no dollar limitations on items that employers of lobbyists may provide as goodie bags or for silent auctions, provided that there is compliance with T.C.A. §3-6-305(b)(4).

Thomas J. Garland,

Chair

R. Larry Brown

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Benjamin S. Purser, Jr.,

Commissioners

Date: July 31, 2007